

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI**

FAULKNER LITERARY RIGHTS, LLC

PLAINTIFF

VS.

CIVIL ACTION NO. 3:12-CIV-100-M-A

SONY PICTURES CLASSICS INC.

And JOHN DOE PERSONS OR

ENTITIES 1-100

DEFENDANTS

**DEFENDANT SONY PICTURES CLASSICS INC.'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Defendant Sony Pictures Classics Inc. (“Sony Classics”) moves, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss all claims asserted in Plaintiff’s Complaint for failure to state a claim on which relief may be granted. In support of this motion, Sony Classics states:

1. In 2011 Sony Classics distributed the motion picture *Midnight in Paris*, written and directed by Woody Allen (“The Film”). The Film’s protagonist Gil Pender is on vacation in Paris with his fiancée and travels back in time to spend his evenings with great artists of the early 20th Century—F. Scott Fitzgerald, Ernest Hemingway, Gertrude Stein. When he tries to explain what is happening to his fiancée, the protagonist paraphrases a nine-word quote from William Faulkner, expressly attributed to Mr. Faulkner on-screen. (Complaint, ¶¶ 7-10).

2. In its Complaint, Plaintiff focuses its attention on one line in a feature length film: “The past is not dead! Actually, it’s not even past. You know who said that? Faulkner. And he was right. And I met him, too. I ran into him at a dinner party.” (Complaint, ¶ 9).

3. From this quote, Plaintiff argues a violation of its copyright in *Requiem for a Nun*, a work by William Faulkner of some 220 pages originally published in 1954. (Complaint, ¶¶ 10, 14-18). Plaintiff also claims violations of the Lanham Act (claiming that consumers will somehow believe the late Mr. Faulkner commercially sponsored the film) and of Mississippi’s common law (claiming that the use of Mr. Faulkner’s name constitutes misappropriation). (*Id.* at ¶¶ 19-29). All of Plaintiff’s claims fail as a matter of law.

4. Plaintiff’s purported copyright infringement claim does not survive a motion to dismiss because: (a) the use of a nine-word quotation from a full-length novel is a *de minimis* use and is not actionable under the Copyright Act; and (b) the Film’s use is a fair use expressly allowed by Section 107 of the Copyright Act.

5. Plaintiff’s purported Lanham Act claim also lacks merit. Plaintiff is prohibited from using the Lanham Act to subvert the Copyright Act. Further, the First Amendment prohibits Plaintiff’s purported Lanham Act claim.

6. Plaintiff’s “commercial appropriation” claim fails as a matter of law because the Copyright Act expressly preempts state law causes of action that are equivalent to any of the exclusive rights within the general scope of copyright.

Additionally, Plaintiff's appropriation claim fails because Mr. Faulkner is deceased and thus has no privacy right that can be invaded.

7. Sony Classics supports this motion with its Memorandum in Support of Motion to Dismiss; a DVD containing a true and correct copy of the film *Midnight in Paris*, written and directed by Woody Allen, which is attached as Exhibit A to the Declaration of Christian D. Carbone; and a true and correct copy of the novel *Requiem for a Nun*, by William Faulkner, which is attached as Exhibit B to the Declaration of Christian D. Carbone.

WHEREFORE, PREMISES CONSIDERED, Sony Pictures Classics Inc. respectfully requests that the Court grant this motion to dismiss and enter an order dismissing with prejudice the entire Complaint.

Dated: December 18, 2012

LOEB & LOEB LLP

By: /s/ Christian D. Carbone

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendant Sony Pictures Classics Inc. does hereby certify that he has this day served a true and correct copy of the above and foregoing document by via the Court's Electronic Case Filing System which sent notification to the following:

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ATTORNEYS FOR PLAINTIFF

SO CERTIFIED, this the 18th day of December, 2012.

s/Paul S. Rosenblatt
PAUL S. ROSENBLATT

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